

**McCARTHY & HOLTHUS, LLP**

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8 Attorneys for Plaintiff/ Counter Defendant  
 9 *U.S. Bank*

10           **UNITED STATES DISTRICT COURT**  
 11           **DISTRICT OF NEVADA**

12           U.S. BANK, NATIONAL ASSOCIATION AS  
 13 TRUSTEE FOR THE  
 14 CERTIFICATEHOLDERS OF BEAR  
 15 STEARNS ASSET-BACKED SECURITIES 1  
 16 TRUST 2006-AC5, ASSET-BACKED  
 17 CERTIFICATES, SERIES 2006-AC5

18           Case No. 2:15-cv-00786-RCJ-PAL

19           **STIPULATION TO EXTEND**  
 20           **DISCOVERY DEADLINES**

21           **(First Request)**

22           Plaintiff,

23           v.

24           NV EAGLES, a Nevada Limited Liability  
 25 Company; UNDERWOOD PARTNERS, LLC  
 26 a Nevada Limited Liability Company;  
 27 SANDSTONE CONDOMINIUMS  
 28 HOMEOWNERS ASSOCIATION, a Nevada  
 29 non-profit organization

30           Defendants

31           COMES NOW U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR THE  
 32 CERTIFICATEHOLDERS OF BEAR STEARNS ASSET-BACKED SECURITIES 1 TRUST  
 33 2006-AC5, ASSET-BACKED CERTIFICATES, SERIES 2006-AC5 ("U.S. BANK") On the one  
 34 hand by and through their attorney of record Thomas Beckom, Esq of the law firm of McCarthy  
 35 Holthus, LLP, NV EAGLES as well as UNDERWOOD PARTNER LLC by and through their  
 36 attorney of record John Henry Wright, Esq of the law firm The Wright Law Group and  
 37 SANDSTONE CONDOMINIUM HOMEOWNERS ASSOCIATION by and through their

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1 attorney of record Elizabeth Lowell of the law firm of Pengilly Robbins and hereby files the  
 2 STIPULATION TO EXTEND DISCOVERY DEADLINES. This stipulation is filed pursuant to  
 3 LR 6-1 as well as LR 26-4 as is fully supported by a showing of "good cause".

4 **A. DISCOVERY COMPLETED**

- 5 1. U.S. Bank has exchanged their Mandatory Disclosures  
 6 2. NV Eagles and Underwood has exchanged their Mandatory Disclosures  
 7 3. Sandstone Condominium Homeowners association has exchanged their Mandatory  
 8 Disclosures

9 **B. DISCOVERY TO BE COMPLETED**

- 10 1. Written Discovery to Sandstone Condominium Homeowners regarding the terms of the  
 11 HOA Sale.  
 12 2. A possible deposition of the Fed. R. Civ. Pro 30(b)(6) witness for Sandstone  
 13 Condominium Homeowners  
 14 3. Follow up discovery on any issues or salient facts discovered during the investigation  
 15 concerning Sandstone Condominium Homeowners  
 16 4. A subpoena to Nevada Association services and/ or written discovery  
 17 5. A possible deposition of the Fed. R. Civ. Pro 30(b)(6) witness for Nevada Association  
 18 Services  
 19 6. Written Discovery to NV Eagles and/ Or Underwood regarding the terms of the HOA  
 20 Sale and possibly the terms of their transfer of the property from Underwood to NV  
 21 Eagles/.  
 22 7. A possible deposition of the Fed. R. Civ. Pro 30(b)(6) witness for NV Eagles and/ Or  
 23 Underwood  
 24 8. An appraisal of the property which is the subject of this action.

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1           **C. REASONS DISCOVERY WAS NOT COMPLETED**

2           U.S. Bank was in the process of obtaining an appraisal of the real property at issue in this  
 3 litigation. U.S. Bank requested an appraisal from a licensed appraiser that U.S. Bank feels would  
 4 be able to be certified as an expert for valuation purposes under *Daubert*. However U.S. Bank hit  
 5 a last minute snag in that the appraiser typically does not do appraisals where the Subject Property  
 6 is located, which is Mesquite, NV. As such U.S. Bank needs additional time to locate and obtain  
 7 an appraiser whom is familiar with the local real estate market in Mesquite, which is marketedly  
 8 different from the real estate market in Las Vegas.

9           This Court has found “good cause” under LR 26-4 where a party was unable to perform being  
 10 discovery against a Defendant because of the inability to perform discovery due to circumstances  
 11 outside of their control. *United Nat'l Funding LLC v. JetDirect Aviation, Inc* 2012 U.S. LEXIS  
 12 89587 (D. Nev. 2012)(finding good cause where issues with the interpretation of a bankruptcy  
 13 stay against one defendant prevented meaningful discovery against that defendant). Typically in  
 14 the Federal context, “good cause” does not necessarily contemplate prejudice to the other parties  
 15 but instead contemplates that the discovery deadlines cannot be reasonably met despite the  
 16 diligence of the parties. *Johnson v. Mammoth Recreations* 975 F.2d 604 (9<sup>th</sup> Cir 1992)

17           Here U.S. Bank has been diligent in that they were attempting to obtain an expert to opine of  
 18 valuation of the Subject Property however ran into unanticipated and unexpected issues with the  
 19 property being located in Mesquite, Nevada as opposed to Las Vegas. U.S. Bank believed they  
 20 had an expert however the expert would have had difficulty appraising the property in light of the  
 21 unique idiosyncrasies of the Real Estate Market in Mesquite. As such U.S. Bank has been  
 22 diligent within the meaning of the rule and the difficulties encountered by U.S. Bank constitute  
 23 “good cause” to extend discovery 30 days so that U.S. Bank can obtain their appraisal.

24           Moreover, U.S. Bank was not made aware of this issue until Friday, September 18, 2015 when  
 25 U.S. Bank attempted to obtain the appraisal by the September 24, 2015 deadline. As such U.S.

1 Bank contends that this also constitutes “excusable neglect” for not having requested this by  
 2 September 4, 2015.

3 As such U.S. Bank contends that extending the deadlines 30 days is proper.

4 **D. PROPOSED SCHEDULE FOR CONTINUANTION OF DISCOVERY**

5 U.S. Bank proposes that Discovery Scheduled be modified to read:

<u>Activity</u>	<u>Current Dates</u>	<u>Proposed Dates</u>
Last day to complete discovery	November 23, 2015	December 23, 2015
Last day to amend pleading/ add parties	August 25, 2015	No Change
Last day for initial expert disclosures	September 24, 2015	October 26, 2015
Last day for rebuttal expert disclosures	October 26, 2015	November 30, 2015 <sup>1</sup>
Last day for dispositive motions	December 23, 2015	January 25, 2016

12  
 13 Therefore the parties here by stipulate to the relief as outlined above and respectfully  
 14 request that the court modify the July 31, 2015 accordingly.  
 15 /.../.../  
 16  
 17 /.../.../  
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 19 /.../.../  
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 21 /.../.../  
 22  
 23 /.../.../  
 24

25 <sup>1</sup> This date was moved to avoid the Thanksgiving holiday to the following Monday after Thanksgiving.  
 26

1 Therefore it is hereby **STIPULATED** between the parties that the discovery deadlines  
 2 shall be amended as follows:

3	Last day to complete discovery	December 23, 2015
4	Last day to amend pleading/ add parties	No Change
5	Last day for initial expert disclosures	October 26, 2015
6	Last day for rebuttal expert disclosures	November 30, 2015
7	Last day for dispositive motions	January 25, 2016

8  
 9  
 10 /s/Thomas Beckom, Esq \_\_\_\_\_

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11  
 12 /s/ John Henry Wright, Esq \_\_\_\_\_

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13  
 14  
 15  
 16 ORDER

17  
 18 IT IS SO ORDERED.

19 IT IS FURTHER ORDERED that, pursuant to the direction of the district judge that trial be  
 20 set on the trial stack closest to 120 days after the close of discovery, the **trial date is set for**  
**May 2, 2016, at 9:00 a.m., with calendar call on April 25, 2016, at 10 a.m.** before Judge  
 21 Robert C. Jones.

22 IT IS FURTHER ORDERED that absent compelling circumstances and a strong showing of  
 23 good cause, no further extensions will be allowed.

24 Dated this 6th day of October, 2015.

25  
 26   
 UNITED STATES MAGISTRATE JUDGE